



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUN 28 2019

REPLY TO THE ATTENTION OF

**VIA E-MAIL**  
**RETURN RECEIPT REQUESTED**

Barry Marietta  
DTE Energy – Trenton Channel Power Plant  
One Energy Plaza  
Detroit, MI 48226  
Email: [barry.marietta@dteenergy.com](mailto:barry.marietta@dteenergy.com)

Dear Mr. Marietta:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves DTE Energy – Trenton Channel Power Plant, docket no. CAA-05-2019-0026. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on June 28, 2019.

Pursuant to paragraph 28 of the CAFO, DTE Energy must pay the civil penalty within 30 days of the filing date. Your check must display the case name and case docket number.

Please direct any questions regarding this case to Amanda Urban, Attorney, at 312-353-4331.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Marshall", is written over a horizontal line.

Sarah Marshall, Chief  
Air Enforcement and Compliance Assurance Section (MI/WT)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail  
Regional Hearing Clerk/via electronic mail  
Amanda Urban/via electronic mail  
Jenine Camilleri//via electronic mail  
Wilhemina McLemore/via electronic mail

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:**

**DTE Energy Company,  
Trenton, Michigan,**

**Respondent.**



**Docket No.**

**CAA-05-2019-0026**

**Proceeding to Assess a Civil Penalty  
Under Section 113(d) of the Clean Air Act,  
42 U.S.C. § 7413(d)**

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is DTE Energy Company (or "DTE"), a corporation doing business in Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. Under Section 112 of the CAA, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coal- and Oil-Fired Electric Utility Steam Generating Units (NESHAP Subpart UUUUU) at 40 C.F.R. §§ 63.9980 through 63.10042.

10. The owner or operator of an existing affected facility was required to comply with the requirements of 40 C.F.R. §§ 63.9980 through 63.10042 by April 16, 2015. DTE received a one-year extension until April 16, 2016, under CAA Section 112(i)(3)(B), 42 U.S.C. § 7412(i)(3)(B) for compliance with this standard at the Trenton Channel Power Plant.

11. The NESHAP for Coal- and Oil-Fired Electric Utility Steam Generating Units applies to coal-fired electric utility steam generating units. 40 C.F.R. §§ 63.9981, 63.10042.

12. The NESHAP Subpart UUUUU, at 40 C.F.R. § 63.10000(b) provides that, at all times, owners and operators of affected equipment must operate and maintain any affected source, including air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.

13. The NESHAP Subpart UUUUU, at 40 C.F.R. § 63.9991(a)(1), referencing Table 2 to NESHAP Subpart UUUUU, states that an existing coal-fired unit that is not combusting low rank virgin coal must comply with a mercury (Hg) emission limit of 1.2 lb/TBtu.

14. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$47,357 per day of violation up to a total of \$378,852 for CAA violations that occurred after November 2, 2015, for which penalties are assessed on or after January 15, 2019, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

15. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

16. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

#### **Factual Allegations and Alleged Violations**

17. DTE is a "person," as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

18. DTE owns and operates a coal-fired electric utility steam generating unit identified as "EU-BOILER9A" (Unit 9) at the Trenton Channel Power Plant, 4695 Jefferson Avenue West, Trenton, Michigan. Mercury emissions from Unit 9 are continuously monitored with a sorbent trap monitoring system.

19. Unit 9 is an "affected source" as that term is defined in 40 C.F.R. § 63.9982.

20. In a letter to Michigan Department of Environment, Great Lakes, and Energy (Michigan EGLE) received on April 27, 2018, DTE notified Michigan EGLE of a deviation of

Unit 9 from the Hg emission limit identified in paragraph 13, above, that occurred from March 3, 2018, through March 12, 2018. The duration of this deviation is 10 days.

21. DTE described the cause of the deviation identified in paragraph 20 above, as a result of “insufficient activated carbon injection (ACI) into the flue gas caused by malfunctioning blowers in the ACI system.”

22. On May 16, 2018, Michigan EGLE referred the matter to EPA, as Michigan has not been delegated the authority to enforce NESHAP Subpart UUUUU. 40 C.F.R. § 63.99.

23. By failing to operate and maintain the air pollution control system associated with Unit 9 with good air pollution control practices for minimizing emissions, DTE has violated 40 C.F.R. § 63.10000(b) and Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3).

24. By exceeding the Hg emission limit from March 3, 2018, through March 12, 2018, DTE has violated 40 C.F.R. § 63.9991(a)(1) and Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3).

25. On September 12, 2018, EPA issued to DTE a Finding of Violation alleging that it violated the NESHAP Subpart UUUUU by failing to operate and maintain the air pollution control system in accordance with good air pollution control practices for minimizing emissions and by exceeding the Hg emission limit at the Trenton Channel Power Plant.

26. On October 25, 2018, representatives of DTE and EPA discussed the September 12, 2018 Finding of Violation.

#### **Civil Penalty**

27. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, and DTE’s cooperation, prompt return to compliance, and

agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$25,133.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$25,133 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

Or, for checks sent by express mail, sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must note the Respondent's name and the docket number of this CAFO.

29. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (ECA-18J)  
Air Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Amanda Urban (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

30. This civil penalty is not deductible for federal tax purposes.

31. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 43, below, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

32. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

#### **Supplemental Environmental Project**

33. Respondent must complete a supplemental environmental project (SEP) designed to protect public health and the environment by implementing an energy efficiency project as follows:

- a. Respondent shall purchase and install energy-efficient lighting equipment to replace inefficient lighting equipment in public buildings operated by municipalities in the area affected by Respondent's alleged noncompliance.

- b. Respondent has selected the Gross Ile School District and the City of Trenton Ice Arena to implement and receive this SEP. Respondent may select a different entity to implement or receive the SEP, but it must provide EPA with notice of the change and a description of the new entity's qualifications in advance. EPA has the right to disapprove a SEP implementer and/or recipient if the proposed implementer or recipient does not have substantial experience in energy-efficiency construction or is not sufficiently connected to Respondent's alleged noncompliance as determined by EPA.
34. The SEP must be complete within two years of the effective date of this CAFO.
35. Respondent must spend at least \$95,000 to complete the SEP.
36. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:
- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is at least \$95,000;
  - b. That, as of the date of executing this Decree, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
  - c. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;
  - d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
  - e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
  - f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
  - g. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP; and



- h. Respondent certifies that it has inquired of the SEP recipient (and implementor if applicable) whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the recipient that it is not a party to such a transaction.

37. EPA may communicate with representatives of the implementer and/or recipient of this SEP at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

38. Respondent must submit a SEP completion report to EPA by no later than 25 months from the effective date of this CAFO. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any problems encountered, and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

39. Respondent must submit all reports required by this CAFO either electronically to [r5airenforcement@epa.gov](mailto:r5airenforcement@epa.gov), or by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 29, above.

40. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know

that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

41. Following receipt of the SEP completion report described in paragraph 38, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 43.

42. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 43, below.

43. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$100,000.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 35, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 35, Respondent must pay a penalty of \$15,000.

- d. If Respondent did not submit timely the SEP completion report required by paragraph 38, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 <sup>st</sup> through 14 <sup>th</sup> day
\$150	15 <sup>th</sup> through 30 <sup>th</sup> day
\$200	31 <sup>st</sup> day and beyond

44. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

45. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 28, above, and will pay interest and nonpayment penalties on any overdue amounts.

46. Any public statement that Respondent makes referring to the SEP must include the following language: "DTE Energy Company undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against DTE Energy Company for violations of the Clean Air Act."

47. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

#### **General Provisions**

48. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: urban.amanda@epa.gov (for Complainant), and barry.marietta@dteenergy.com (for Respondent).

49. This CAFO resolves Respondent's liability for federal civil penalties for only the violations alleged in this CAFO.

50. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

51. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 49, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

52. Respondent certifies that it is complying fully with NESHAP Subpart UUUUU.

53. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

54. The terms of this CAFO bind Respondent, its successors and assigns.


55. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

56. Each party agrees to bear its own costs and attorneys fees in this action.

57. This CAFO constitutes the entire agreement between the parties.

**DTE Energy Company, Respondent**

6/19/19  
Date

  
\_\_\_\_\_  
Michael F. Dunlap II  
Plant Manager, Trenton Channel Power Plant  
DTE Energy Company

**United States Environmental Protection Agency, Complainant**

6/28/2019  
Date

Michael D. Harris  
Michael D. Harris  
Acting Division Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order  
In the Matter of: DTE Energy Company  
Docket No. CAA-05-2019-0026

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

6/28/19  
Date

Ann L. Coyle  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5

Consent Agreement and Final Order

In the matter of: DTE Energy – Trenton Channel Power Plant

Docket Number: CAA-05-2019-0026

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2019-0026, which was filed on June 28, 2019, in the following manner to the following addressees:

Copy by E-mail to Respondent: Barry Marietta  
One Energy Plaza  
Detroit, Michigan 48226  
barry.marietta@dteenergy.com

Copy by E-mail to Amanda Urban  
Attorney for Complainant: urban.amanda@epa.gov

Copy by E-mail to Andrea Hayden  
Attorney for Respondent: andrea.hayden@dteenergy.com

Copy by E-mail to Ann Coyle  
Regional Judicial Officer: coyle.ann@epa.gov

Dated: June 28, 2019

L. Whitehead  
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5